IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No. 135 of 2000

Date of decision: 26th July, 2007

Rajinder Kumar Saini & others	……..Appellants
Versus	
State Bank of Patiala	……Respondent

Coram:

The Hon'ble Mr.Justice Surinder Singh, J.

Whether approved for reporting ?[1] No.

For the appellants : Mr H K Bhardwaj, Advocate.

For the respondent : Mr K D Sood, Advocate.

Surinder Singh, J.

The trial court had decreed the Civil Suit No.5 of 1996, on 28th January, 2000,of the respondent-Bank for recovery of Rs.2,21,264/- with costs and interest at the rate of 15.25% per annum from the date of filing of the suit till its payment with quarterly rests.

The appellants herein, feeling aggrieved by and dissatisfied with the impugned judgment and decree, passed by the the trial court, filed the instant appeal on the ground that the clause of interest in the agreement is based upon on confusion whereas simple rate of interest was

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?yes.***

mentioned in the document at the rate of 12.50% per annum. Penal rate of interest was wrongly charged, The signatures were obtained on the blank documents and the amount which was paid was not deducted from the principal amount and the plaintiff bank had committed an error in calculating the balance.

I have heard learned counsel for the parties and have re-appraised the evidence on record.

Mr Bhardwaj, learned counsel for the appellants has vehemently argued that the respondent-Bank could not prove its case and wrongly charged rate of interest, therefore, the findings arrived at by the trial court were incorrect. On the other hand, Mr Sood, learned counsel for the respondent-Bank has forcibly supported the impugned judgment and decree passed by the trial court.

As a matter of fact, the appellant Rajinder Kumar Saini had applied, for term loan to the tune of Rs.1,61,242/-, to the respondent-Bank on 22.11.1998, for the purchase of DCM (Toyata) Vehicle. An amount of Rs.1,60,000/- was sanctioned by the Regional Office, Chandigarh, vide its letter dated 24.11.1998. It is averred in the plaint that

appellant No.1 executed and signed the following documents in favour of the respondent-Bank:

a) *sanctioned letter dated 24.11.1998 from Regional Manager, Office, Chandigarh.*
b) *Letter of arrangement*
c) *Agreement for medium term loan dated 28.11.1988.*

Appellant No.1 had agreed to return the aforesaid amount of Rs.1,60,000/- in 36 monthly installments, commencing from 28th February,1989 and the remaining installments were required to be paid on monthly basis until the entire amount is liquidated. The appellant No.1 further agreed to repay the loan amount with interest at the rate of 4% below the State Bank of India Advance Rate, with minimum of 12.5% per annum with quarterly rests, rising and falling on the daily balance of amount due subject to enhancement, and the appellant No.1 also agreed to pay enhanced rate of interest at the rate of 2% above the prevailing rate of interest in case of making default in the loan amount. Appellant No.2 Smt. Meeto Devi stood surety and executed guarantee deed on 28.11.1988 in favour of respondent–Bank, which is a continuing one to secure the loan amount aforesaid. Appellant No.2

also created equitable mortgage of her land, measuring 01K-04M bearing Khewat No.370 Khatauni No.687 Khasra No. 3816/711 Ta 714, as per Jamabandi for the year 1976-77 situated in Una (HP), by deposit of sale deed dated 5.8.1987. Revival letters were also executed by the appellants to secure the loan amount. Thus, the respondent-Bank had prayed for a decree of the balance amount along with interest at the rate of 19.25% till its realization.

In their written statement, it was the case of the appellants that no documents were executed, as alleged. However, guarantee deed is admitted to have been executed by Smt.Meeto Devi but according to her she had signed un-filled form without having been explained its contents.

On the pleadings of the parties, the trial court had framed the following issues:

1. *Whether the plaintiff bank is entitled to recover Rs.2,21,264/- from defendants on account of availing term loan to the extent of Rs.1,61,242/- inclusive of interest till 28.9.1996? OPP*
2. *Whether the plaintiff bank is entitled to interest @ 19.25%*

per annum with quarterly rests? OPP

3. *Relief.*

After going through the evidence of the parties and upon hearing the learned counsel for the parties, the trial court answered issue No.1 in affirmative and in answer to issue No.2, the trial court held that the respondent-Bank is entitled to interest at the rate of 15.25% per annum with quarterly rests. Consequently, the suit was decreed, against which the instant appeal has been filed as aforesaid.

I have considered the rival contentions of the learned counsel for the parties and have critically examined the evidence on record.

As a matter of fact, agreement Ex.PF/1, Hypothecation deed Ex.PF/2, Guarantee deed Ex.PF/3, hypothecation letter Ex.PF/4 and letter Ex.Ex.PF/5 have been proved by Shri Raj Lal Special Assistant (PW-2). Shri Anant Ram (PW-3) has proved the revival letter (Ex.PG) signed by the appellant on 1.6.1991. Sarup Singh (PW-4) has proved another revival letter (Ex.PH) dated 4.10.1993 Shri Amar Nath, Branch Manager (PW-5) has proved the balance confirmation letter Ex.PW-5/A. The appellant-defendant also appeared himself as his own witness

as DW-1 and admitted that he gave an application Ex.PF for taking loan and has admitted that he filled in the documents Exs.PF/2, PF/3, PB, PD, PG, PH and PW-5/A, whereas these documents have already been proved by the witnesses of the respondent-bank, as aforesaid. In other words, from the evidence on record, it is established that the documents, which were signed by the appellants, stood proved against them and there is no evidence on record to show that the documents aforesaid were unfilled at the time of taking of loan. Rate of interest, as claimed by the respondent-Bank, is not born out from the documents aforesaid. The agreement governs the terms and conditions of the loan, which cannot be altered by leading oral evidence. Even the court is also not competent to do so. Therefore, I conquer with the findings arrived at by the trial court on each issues and there is no rebuttal to it. Even otherwise the appellants have not seriously contested the taking of loan except the rate of interest in appeal. (PW-1) has clearly stated that at the time of institution of the suit, rate of interest was 17.25% per annum and the respondent Bank was also entitled to claim penal rate at the rate of 2% per

annum. The trial court has noticed that the said witness has no where stated what was the State Bank of India loan advance rate but in view of the pleadings as contained in para 4 of the plaint, it was 17.25% per annum. If it was 17.25% per annum the respondent-bank was entitled to interest @ 4% below this rate which comes to 13.25% per annum. Thus, the respondent-Bank was entitled to recover the interest at the rate of 13.25% and 2% above the prevailing rate of interest in case of default in the installments, which comes to 15.25% per annum, with quarterly rests,thus the trial court has rightly awarded the interest as stated above.

No other point urged before me.

In view of the above discussion, I do not find any illegality, committed by the trial court in the impugned judgment and decree. Consequently, the appeal is dismissed with costs.

July 26, 2007 (Surinder Singh),J.
(D)